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12 THE UNITED STATES BANKRUPTCY COURT
13 FOR THE DISTRICT OF ARIZONA

14 In Re:

15 BCE WEST, L.P., et al

16 Debtors

18 EID: 38-319719

Chapter 11

Case Nos. 98-12547 through
98-12570-ECF-CGC

Jointly Administered

**INTERIM AND PROPOSED FINAL
ORDER APPROVING AMENDMENT NO.
4 TO DEBTOR IN POSSESSION CREDIT
AGREEMENT PURSUANT
TO 11 U.S.C. SECTION 364**

21 Upon consideration of the motion (the "Motion") of the debtors and debtors in
22 possession (each a "Debtor," and collectively "Debtors") in the above-captioned cases (each a
23 "Chapter 11 Case," and collectively the "Chapter 11 Cases") for: (i) entry of an order pursuant to
24 Section 364 of the United States Bankruptcy Code, 11 U.S.C. Sections 101, et seq. (the
25 "Bankruptcy Code"), and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the
26 "Bankruptcy Rules"), approving Amendment No. 4 to Debtor in Possession Credit Agreement
27 dated as of August 30, 1999 (the "Fourth Amendment"), among each Debtor, the lenders



1 thereunder (each, a "Lender," and collectively "Lenders"), General Electric Capital Corporation,
2 in its capacities as a Lender and administrative agent thereunder ("Administrative Agent"), and
3 Bank of America, N.A. (formerly known as Bank of America National Trust and Savings
4 Corporation), in its capacities as a Lender and collateral agent thereunder ("Collateral Agent") (a
5 true and complete copy of the Fourth Amendment, in substantially final form, is annexed hereto
6 as Exhibit A), and (ii) the setting of a final hearing on approval of the Fourth Amendment, as
7 more fully set forth in the Motion; and it appearing that due notice of the Motion has been given;
8 and it appearing that the relief sought in the Motion is in the best interests of the Debtors, their
9 respective estates, creditors and parties in interest; and sufficient cause appearing therefor; and
10 after due deliberation, it is hereby FOUND, DETERMINED, ORDERED AND DECREED
11 THAT:

12 1. The Motion is granted.

13 2. The Debtors are authorized to enter into the Fourth Amendment and all
14 related Loan Documents, and to consummate any and all transactions contemplated thereby, and
15 the Fourth Amendment and all such Loan Documents and transactions are approved in their
16 entirety.

17 3. The rights and remedies of the Lenders, Administrative Agent and
18 Collateral Agent in respect of the obligations of the Debtors under the Debtor in Possession
19 Credit Agreement dated as of October 5, ¹⁹⁹⁸~~1999~~, among Debtors, Lenders, Administrative Agent
20 and Collateral Agent (the "Credit Agreement") and granted under the "Final Order Approving
21 Postpetition Financing And Granting Liens and Super Administrative Priority Pursuant to 11
22 U.S.C. §§ 364(c) And (d), And Modifying the Automatic Stay," entered by the Court on October
23 29, 1998, as amended by (i) Amendment No. 1 to Debtor in Possession Credit Agreement dated
24 as of February 24, 1999, approved by the "Interim and Proposed Final Order Approving
25 Amendment No. 1 to Debtor in Possession Credit Agreement Pursuant To 11 U.S.C. Section
26 364," entered by the Court on February 24, 1999, (ii) Amendment No. 2 to Debtor in Possession
27 Credit Agreement dated as of May 25, 1999, approved by the "Interim and Proposed Final Order

1 Approving Amendment No. 2 to Debtor in Possession Credit Agreement Pursuant To 11 U.S.C.
2 Section 364," entered by the Court on May 25, 1999, and (iii) Amendment No. 3 to Debtor in
3 Possession Credit Agreement dated as of June 29, 1999, approved by the "Interim and Proposed
4 Final Order Approving Amendment No. 3 to Debtor in Possession Credit Agreement Pursuant To
5 11 U.S.C. Section 364," entered by the Court on June 30, 1999, are hereby reaffirmed with
6 respect to the Credit Agreement, as amended by the Fourth Amendment.

7 4. The transactions described in the Motion, the Credit Agreement and the
8 Fourth Amendment and any related Loan Documents have been negotiated in good faith and at
9 arms-length between the Debtors, Lenders, Administrative Agent and Collateral Agent, and any
10 credit extended to the Debtors by Lenders, Administrative Agent and Collateral Agent thereunder
11 shall be deemed to have been extended in good faith, as that term is used in Bankruptcy Code
12 Section 364(e).

13 5. Debtors shall, on or before September 9th, 1999, serve by e-mail copies of a
14 notice of entry of this Order, together with a copy of this Order, to the parties on Master Service
15 List No. 12 dated August 26, 1999. The notice of approval of this Order shall state that any party
16 in interest objecting to the entry of a final order on the Motion shall file a written objection with
17 the United States Bankruptcy Court Clerk for the District of Arizona no later than
18 September 14th, 1999, which objection shall be served so that the same is received at or before 4:00
19 p.m. (Arizona time) on such date by the Office of the United States Trustee and the counsel to the
20 Debtors, Administrative Agent and Collateral Agent referred to in the notice of entry of this
21 Order that will be sent by Debtors with this Order. If no written objection and request for final
22 hearing on the Motion has been timely filed with this Court, and served upon and received by all
23 parties entitled to notice thereof, this Order shall be deemed to be the final order on such date
24 after 4:00 p.m. (Arizona time) and shall continue on a final basis and remain in full force and
25 effect and constitute final authority for the extension of the financial accommodations
26 contemplated by this Order and the Fourth Amendment, and any objection by any party in
27 interest to the terms of this Order and the relief requested in the Motion shall be deemed forever

1 waived. If a timely objection is filed, served, and received, (y) a written reply thereto shall not be
2 required but may be filed and served so that it is received no later than September ¹⁶~~17~~, 1999, at or
3 before 12:00 p.m. (Arizona time) and (z) a final hearing shall be held on the Motion and
4 objections thereto on September ¹⁶~~17~~, 1999, at a time to be specified by the Court.

5
6 Dated this ^{8th} day of September, 1999

CHARLES G. CASE II

Hon. Charles G. Case
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

EXECUTION COPY

AMENDMENT NO. 4 TO DEBTOR IN POSSESSION CREDIT AGREEMENT

Dated as of August 30, 1999

by and among

BOSTON CHICKEN, INC.
and the other Borrowers hereunder,
Debtors and Debtors in Possession,

as Borrowers,

THE LENDERS SIGNATORY HERETO
FROM TIME TO TIME,

as Lenders,

GENERAL ELECTRIC CAPITAL CORPORATION,

as Administrative Agent and a Lender,

and

BANK OF AMERICA, N.A.

as Collateral Agent and a Lender

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SCHEDULES

NONE

AMENDMENT NO. 4 TO DEBTOR IN POSSESSION CREDIT AGREEMENT

THIS AMENDMENT NO. 4 TO DEBTOR IN POSSESSION CREDIT AGREEMENT (the "Fourth Amendment") is entered into as of August 30, 1999, by and among (i) BOSTON CHICKEN, INC., a Delaware corporation ("BCI") and the other Borrower parties to the "Existing DIP Credit Agreement" referred to below (each, individually a "Borrower" and collectively the "Borrowers"), (ii) each of the lenders listed on the signature pages hereof (each individually a "Lender" and collectively "Lenders"), (iii) GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation (in its individual capacity, "GE Capital"), for itself as a Lender and as Administrative Agent for Lenders, and (iv) BANK OF AMERICA, N.A., formerly known as Bank of America National Trust and Savings Association (in its individual capacity, "BofA"), for itself as a Lender and as Collateral Agent for Lenders (Administrative Agent and Collateral Agent being referred to collectively as "Agents"), with reference to the following facts, which shall be construed as part of this Fourth Amendment:

RECITALS

A. Agents, Lenders, and Borrowers are parties to a Debtor in Possession Credit Agreement dated as of October 5, 1998, as amended by Amendment No. 1 to Debtor in Possession Credit Agreement dated as of February 24, 1999, Amendment No. 2 to Debtor in Possession Credit Agreement dated as of May 25, 1999, and Amendment No. 3 to Debtor in Possession Credit Agreement dated as of June 29, 1999 (such agreement, as so amended, the "Existing DIP Credit Agreement"; capitalized terms not otherwise defined in the Recitals or in the preamble are as defined in the Existing DIP Credit Agreement as hereby amended).

B. Borrowers have requested, among other things, that Agents and Lenders reduce the Availability Reserve effective August 27, 1999, extend the previously granted waiver relating to any noncompliance by Borrowers with respect to the Minimum System EBITDAL Covenant for Retail Period 7 of 1999, and grant a waiver with respect to the Minimum System EBITDAL Covenant for Retail Period 8 of 1999, and Agents and Lenders have agreed, to the extent provided herein and subject to the terms and conditions hereof, to reduce the Availability Reserve and grant the requested waivers, in each case through September 17, 1999.

C. The rules of construction set forth in Annex A to the Existing DIP Credit Agreement shall govern this Fourth Amendment. Unless otherwise indicated, all references in this Fourth Amendment to sections, subsections, schedules, exhibits, annexes and attachments shall refer to the corresponding sections, subsections, schedules, exhibits, annexes and attachments of or to the Existing DIP Credit Agreement. All schedules, exhibits, annexes and attachments hereto, or expressly identified in this Fourth Amendment, are incorporated herein by reference, and taken together, shall constitute but a single agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the covenants hereinafter contained, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

1. Ratification and Incorporation of Existing DIP Credit Agreement and Other Loan Documents; Release. Except as expressly modified under this Fourth Amendment, (a) each Borrower hereby acknowledges, confirms, and ratifies all of the terms and conditions set forth in, and all of its respective obligations under, the Existing DIP Credit Agreement and the other Loan

Documents to which it is a party, and (b) all of the terms and conditions set forth in the Existing DIP Credit Agreement and the other Loan Documents are incorporated herein by this reference as if set forth in full herein. Without limiting the generality of the foregoing, each Borrower acknowledges and agrees that as of August 27, 1999, the aggregate outstanding principal amount of all Revolving Loans was \$43,289,699.00. Each Borrower represents that it has no offset, defense, counterclaim, dispute or disagreement of any kind or nature whatsoever with respect to the amount of the Revolving Loans or any other Obligations. Each Borrower hereby releases and discharges Agents and Lenders, in their respective capacities as such, together with their respective agents, attorneys, employees, heirs, executors, administrators, officers, directors, successors and assigns, from any and all claims, causes of action and remedies (whether under the Bankruptcy Code or under other applicable law) arising out of, based upon or related to the Obligations, the Collateral or the Loan Documents or any actions taken by any such Person in connection therewith.

2. Limited Waiver by Agents and Lenders. Subject to the satisfaction of each of the conditions set forth in Section 4 of this Fourth Amendment, Agents and Lenders hereby agree to waive, solely during the period from the Fourth Amendment Closing Date through and including September 17, 1999, any Event of Default that may occur as a result of Borrowers' failure to comply with the Minimum System EBITDAL Covenant for Retail Periods 7 or 8 of 1999 (it being understood that, from and after September 18, 1999, such waiver shall terminate and Agents and Lenders shall have all of their respective rights and remedies with respect to any such Event of Default).

3. Amendment of Existing DIP Credit Agreement. The Existing DIP Credit Agreement is hereby amended, as of the Fourth Amendment Closing Date, as follows (and all section references in this Section 3 shall, unless the context otherwise requires, be references to sections in the Existing DIP Credit Agreement):

3.1 Section 1.1(a) (Revolving Credit Facility). Change "11:00 a.m. (New York time)" in the last sentence of clause (i) of Section 1.1(a) to "12:00 noon (New York time)."

3.2 Section 1.3(a) (Voluntary Prepayments). (i) Change the title of Section 1.3(a) to "Voluntary Prepayments; Excess Daily Cash Payments"; (ii) insert "(i)" between the title of Section 1.3(a) and the body of such section, and (iii) add a new clause (ii) to Section 1.3(a) as follows:

(ii) *No later than 1:00 p.m. (New York time) on each Business Day, Borrowers shall wire transfer to the Control Account an amount equal to the Excess Daily Cash for such day (and substantially concurrently therewith, Borrower Representative shall notify Administrative Agent and Collateral Agent, by facsimile, of such transfer (which notice shall include Borrowers' calculations of the Non-Store Cash, Permitted Daily Cash Amount, and Excess Daily Cash (together with all relevant supporting detail and calculations), in each case for the relevant day). Amounts paid pursuant to this Section 1.3(a)(ii) shall be treated as "voluntary payments" for purposes of Section 1.9, and may be reborrowed in accordance with the terms and conditions hereof.*

3.3 Section 1.3(b) (Mandatory Prepayments; ENBC Stock Proceeds). Amend Section 1.3(b) by deleting the proviso at the end of clause (i) and replacing it with the following:

provided, that (i) notwithstanding the foregoing, the Net Cash Proceeds of the Harry's Transaction shall be deposited in a segregated cash collateral account pursuant to the Bankruptcy Court's Order entered on August 24, 1999 approving the Harry's Transaction pending a further determination by the Bankruptcy Court (to be made without regard to this proviso) as provided in such order, it being understood that Lenders and Borrowers each reserve all of their rights with respect to such proceeds, and (ii) for purposes of clause (z) above, Borrowers shall not be deemed to have received any proceeds which are subject to third party claims and are deposited, pending the resolution of such claims, in a segregated cash collateral account pursuant to an Order of the Bankruptcy Court until such funds are authorized to be disbursed pursuant to an Order of the Bankruptcy Court or as agreed by Administrative Agent.

- 3.4 Section 2.2 (Further Conditions to Each Revolving Credit Advance). Delete clause (f) of Section 2.2 and replace it with the following:

(f) after giving effect to any Revolving Credit Advance (or the incurrence of any L/C Obligations), (i) the outstanding principal amount of the Revolving Loan would exceed either (A) the Maximum Amount or (B) the amount then authorized by the Interim Order or the Final Order, as applicable, (ii) Borrowers would not be in compliance with the Availability Limitation, or (iii) the amount of Non-Store Cash would (including the amount of the requested Revolving Credit Advance) exceed the Permitted Daily Cash Amount; or

- 3.5 Section 5.1 (Maintenance of Existence and Conduct of Business). Delete clause (c) of Section 5.1 and replace it with the following:

(c) maintain, keep, and preserve all of its material properties (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition consistent with industry practice, ordinary wear and tear excepted; provided, that leased Stores may be closed in the ordinary course of business upon the expiration of the underlying leases (in which event Borrower Representative shall give prompt written notice to each Agent) or with the written consent of Agents, and owned Stores may be closed with the written consent of Agents; and

- 3.6 Section 6.2 (Investments). Delete the proviso to clause (c) of Section 6.2 and replace it with the following:

provided, that notwithstanding the foregoing: (x) the \$5,000,000 limitation specified above shall not include any amounts that are, in accordance with this Agreement, on deposit in a segregated cash collateral account, and (y) in no event shall the aggregate amount of Non-Store Cash of Borrowers as of 1:00 p.m. (New York time) on any day exceed the Permitted Daily Cash Amount for such day;

- 3.7 Section 8.1 (Events of Default). Delete clause (l) of Section 8.1 and replace it with the following:

(i) the Fourth Amendment Order shall not have become a final order in accordance with its terms on or before the date specified in the second sentence of Paragraph 5 thereof;

(ii) the Exclusivity Extension Order or any of the DIP Financing Orders shall be reversed, modified or revoked;

(iii) an appeal from the entry of the Fourth Amendment Order shall be timely filed and a stay pending appeal shall have been granted; or

(iv) any Borrower shall take any action to modify the Exclusivity Extension Order or any action that is inconsistent with the Exclusivity Extension Order,

in any case under the foregoing clauses (i)-(iv) without Requisite Lenders' written consent.

- 3.8 Section 9.9(a) (Revolving Credit Advances; Payments). The times specified in clause (i) of Section 9.9(a) shall be changed as follows:

(i) 1:00 p.m. (New York time) shall be changed to 1:30 p.m. (New York time); and

(ii) 2:00 p.m. (New York time) shall be changed to 2:30 p.m. (New York time).

- 3.9 Annex A (Definitions; Rules of Construction). Annex A shall be amended as follows:

- a. Amended Definitions. The definitions of each of the following terms in Annex A shall be deleted and replaced with the new definition for such term provided below (or, in the case of the definition of "Availability Reserve," amended as provided below):

"Agreement" means the Debtor in Possession Credit Agreement to which this Annex A is attached or otherwise identified, including all riders, annexes, schedules, and exhibits attached or otherwise identified thereto, as amended by the DIP Amendments and all other amendments, restatements, modifications and supplements thereto, and all appendices, annexes, exhibits or schedules to any of the foregoing, and shall refer to such Agreement as the same may be in effect at the time such reference becomes operative; provided, that any reference to the Exhibits, Schedules and Annexes to the Agreement shall be deemed a reference to the Exhibits, Schedules and Annexes as in effect on the Closing Date or in a written amendment thereto.

"Availability Reserve" -delete clause (10) of the definition of "Availability Reserve" and replace it with the following clauses (10)-(14):

<i>Period</i>	<i>Availability Reserve Amount</i>
<i>(10) July 30, 1999-Fourth Amendment Closing Date</i>	<i>\$7,000,000</i>
<i>(11) 1 Day after Fourth Amendment Closing Date-September 5, 1999</i>	<i>\$3,000,000</i>
<i>(12) September 6, 1999-September 10, 1999</i>	<i>\$2,500,000</i>
<i>(13) September 11, 1999-September 17, 1999</i>	<i>\$1,000,000</i>
<i>(14) September 18, 1999 and thereafter</i>	<i>\$7,000,000</i>

- b. New Definitions. Each of the following definitions shall be added to Annex A:

"DIP Amendments" means the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment.

"DIP Financing Orders" means the Interim Order, the Final Order, the First Amendment Approval Order, the Second Amendment Approval Order, the Third Amendment Approval Order, and the Fourth Amendment Approval Order.

"Excess Daily Cash" means, on any day of determination, the amount (if any) by which the Non-Store Cash as of 1:00 p.m. (New York time) exceeds the Permitted Daily Cash Amount as of such time.

"Fourth Amendment" means "Amendment No. 4 to Debtor in Possession Credit Agreement" dated as of August 30, 1999, and all appendices, annexes, exhibits or schedules thereto.

"Fourth Amendment Approval Order" means an order of the Bankruptcy Court, substantially in the form of Exhibit A to the Fourth Amendment, authorizing each Borrower to execute the Fourth Amendment and perform under the terms of the Agreement and the other Loan Documents as amended by the Fourth Amendment.

"Fourth Amendment Closing Date" means the Business Day on which all conditions precedent to the effectiveness of the Fourth Amendment have been satisfied or waived in writing by Requisite Lenders.

"Harry's Transaction" means the transaction provided for in the "Settlement and Release Agreement" attached as Exhibit A to the Bankruptcy Court's Order approving the "Debtors' Motion for Authority to Compromise and Settle with Harry's Farmers Market, Inc.," without regard to any changes to such transaction that are not consented to by Agents.

"Non-Store Cash" means, as of any time of determination, the aggregate cash balance in the accounts identified as "Concentration Accounts" and the "STAM Account" on the Daily Cash Flow worksheet in the form historically provided to Agents by Borrowers.

"Permitted Daily Cash Amount" means, as of 1:00 p.m. (New York time) on any day of determination, the sum of (i) \$1,500,000 plus (ii) the amount of cash needed by Borrowers to pay or fund all expenditures, presentments and ACHs that are scheduled to be paid on such day and that have not been paid or funded as of such time (including wire transfers made on such day that have not cleared as of such time).

- 3.10 Annex H (Notice Addresses). In Annex H, replace the first address in **paragraph (A)** with the following

GE Capital Commercial Finance
201 High Ridge Road, 3rd Floor
Stamford, Connecticut 06927
Attn: Daniel P. Gioia
Facsimile: 203/316-7896
Telephone: 203/357-6245

4. Conditions Precedent To Obligations. Notwithstanding any other provision of this Fourth Amendment, this Fourth Amendment shall be of no force or effect, and Agents and Lenders shall have no obligations hereunder, until the following conditions have been satisfied, in Requisite Lenders' sole discretion, or waived in writing by Requisite Lenders:

- 4.1 Fourth Amendment and Related Materials; Satisfactory Legal Form. Agents and Lenders shall have received this Fourth Amendment duly executed by Borrowers (and other parties) party hereto and delivered to Agents and Lenders, and all of the other documents, instruments, certificates, opinions, agreements and other materials listed in the Schedule of Documents attached as Annex D-4, each in form and substance satisfactory to Agents. All legal matters incident to the transactions contemplated by this Fourth Amendment shall be satisfactory to Agents and their counsel.
- 4.2 Motion re: Fourth Amendment. Borrowers shall have filed with the Bankruptcy Court and served on the necessary parties in the Chapter 11 Cases a motion, in form and substance acceptable to Agents, seeking Bankruptcy Court approval of the Fourth Amendment Approval Order.
- 4.3 Entry of Fourth Amendment Approval Order. The Bankruptcy Court shall have entered the Fourth Amendment Approval Order, and the date specified in the second sentence of **Paragraph 5** thereof shall be no later than September 9, 1999.

5. Representations and Warranties.

- 5.1 Corporate Power; Authorization; Enforceable Obligations. The execution, delivery and performance by each Borrower of this Fourth Amendment: (i) is within such Borrower's corporate power; (ii) has been duly authorized by all necessary or proper corporate action; (iii) is not in contravention of any provision of such Borrower's certificate of incorporation or by-laws; (iv) will not violate any law or regulation, or

any order or decree of any court or governmental instrumentality; (v) will not conflict with or result in the breach or termination of, constitute a default under, or accelerate any performance required by, any material indenture, mortgage, deed of trust, lease, agreement or other instrument to which such Borrower is a party or by which such Borrower or any of its property is bound, except as disclosed on Schedule 5.1 to the First Amendment; (vi) will not result in the creation or imposition of any Lien upon any of the property of such Borrower other than those in favor of Collateral Agent, for the benefit of Collateral Agent, Administrative Agent and Lenders, all pursuant to the Loan Documents; and (vii) do not require the consent or approval of any Governmental Authority or any other Person. This Fourth Amendment has been duly executed and delivered for the benefit of or on behalf of each Borrower and constitutes a legal, valid and binding obligation of each such Borrower, enforceable against it in accordance with its terms.

- 5.2 Representations and Warranties in Existing DIP Credit Agreement. Each Borrower hereby represents and warrants that the representations and warranties of such Person contained in Section 3 of the Existing DIP Credit Agreement, as amended hereby, are true and correct as of the date hereof (other than changes that have occurred as a result of actions taken by Borrowers pursuant to, or as authorized by, any order of the Bankruptcy Court that has been entered in the Chapter 11 Cases prior to the date hereof). For purposes hereof, as to any representation or warranty which by its terms expressly applied only as of the Closing Date (whether the phrase "as of the Closing Date," "as of the date hereof," "on the date hereof," or some other similar phrase was used), such representation and warranty shall be deemed to have been made as of the Fourth Amendment Closing Date.

6. Miscellaneous.

- 6.1 Headings. The various headings of this Fourth Amendment are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Fourth Amendment or any provisions hereof.
- 6.2 Counterparts. This Fourth Amendment may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.
- 6.3 Interpretation. No provision of this Fourth Amendment shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party's having or being deemed to have structured, drafted or dictated such provision.
- 6.4 Complete Agreement. This Fourth Amendment constitutes the complete agreement between the parties with respect to the subject matter hereof, and supersedes any prior written or oral agreements, writings, communications or understandings of the parties with respect thereto.
- 6.5 Governing Law. This Fourth Amendment shall be governed by, and construed and enforced in accordance with, the laws of the State of New York applicable to contracts made and performed in such state, without regard to the principles thereof regarding conflict of laws.

- 6.6 Effect. Upon the effectiveness of this Fourth Amendment, each reference in the Existing DIP Credit Agreement to "this Agreement," "hereunder," "hereof" or words of like import, shall mean and be a reference to the Existing DIP Credit Agreement as amended hereby and each reference in the other Loan Documents to the Credit Agreement, "thereunder," "thereof," or words of like import shall mean and be a reference to the Existing DIP Credit Agreement as amended hereby.
- 6.7 Conflict of Terms. In the event of any inconsistency between the provisions of this Fourth Amendment and any provision of the Existing DIP Credit Agreement, the terms and provisions of this Fourth Amendment shall govern and control.
- 6.8 No Novation or Waiver. Except as specifically set forth in this Fourth Amendment, the execution, delivery and effectiveness of this Fourth Amendment shall not (i) limit, impair, constitute a waiver by, or otherwise affect any right, power or remedy of, Agents or any Lender under the Existing DIP Credit Agreement or any other Loan Document, (ii) constitute a waiver of any provision in the Existing DIP Credit Agreement or in any of the other Loan Documents or of any Default or Event of Default that may have occurred and be continuing, or (iii) alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Existing DIP Credit Agreement or in any of the other Loan Documents, all of which are ratified and affirmed in all respects and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 4 to Debtor in Possession Credit Agreement as of the day and year first above written.

SIGNATURE PAGES INTENTIONALLY OMITTED